

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

UNITED STATES OF AMERICA and
THE STATE OF MISSOURI,

Plaintiffs,

v.

BLUE TEE CORP.,
GOLD FIELDS MINING LLC, and
THE DOE RUN RESOURCES
CORPORATION,

Defendants.

CIVIL ACTION NO.:

CIVIL COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, at the request of the Administrator of the United States Environmental Protection Agency (EPA), and the State of Missouri, ex rel. Jeremiah W. (Jay) Nixon, Attorney General of Missouri and the Missouri Department of Natural Resources, (collectively "Plaintiffs") file this Complaint and allege as follows:

INTRODUCTION

1. The Plaintiffs bring this civil action against Blue Tee Corp. ("Blue Tee"), Gold Fields Mining LLC ("Gold Fields") and The Doe Run Resources Corporation ("Doe Run") (collectively "Defendants") under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606 & 9607(a), and Mo. Rev. Stat. § 260.530. In this action the Plaintiffs seek: (1) an order requiring Defendants to implement EPA's selected environmental remedy for OU-1 of the Oronogo/Duenweg Mining Belt Superfund Site in Jasper County, Missouri (hereinafter "the Site"); (2) an order requiring Defendants to reimburse the United States and State for costs incurred in response to releases or threatened releases of hazardous substances at OU-1 of the Site; and (3) a declaration that Defendants are liable for all future response costs that may be incurred by Plaintiffs in connection with OU-1 of the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and each defendant pursuant to Sections 106, 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345, and the doctrine of pendant jurisdiction.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because releases and/or threatened releases of hazardous substances at OU-1 of the Site occurred in this District, and because Defendants may be found in this District .

DEFENDANTS

4. Blue Tee Corp. is a Delaware limited liability company.

5. Blue Tee Corp. is the successor in interest to American Lead, Zinc & Smelting Company and Granby Mining and Smelting Company.

6. Gold Fields Mining LLC is a Delaware corporation.

7. Gold Fields is the successor in interest to the Missouri Mining Company and Tri-State Zinc, Inc.

8. The Doe Run Resources Corporation is a New York corporation.

9. Doe Run is the successor in interest to Kansas Exploration, Inc. and the St. Joe Lead Company.

STATUTORY FRAMEWORK

10. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, such hazardous substance.

11. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14, 1981), reprinted in 42 U.S.C.A. § 9615 at 544-48.

12. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

13. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State * * * not inconsistent with the national contingency plan * * *

14. Section 25.530 of Missouri Revised Statutes provides in pertinent part:

1. Any person having control over a hazardous substance shall be strictly liable to the state of Missouri for the reasonable clean up costs incurred by the state as a result of the failure of such person to clean up a hazardous substance involved in a hazardous substance emergency in accordance with the requirements of sections 260-500 to 260.550 and rule promulgated by the department pursuant thereto. If such failure is willful, the person shall, in addition, be liable for punitive damages not to exceed triple the clean up costs, incurred by the state.

GENERAL ALLEGATIONS

15. The Oronogo/Duenweg Mining Belt Superfund Site in Jasper County, Missouri represents a portion of the former Tri-States mining district. The Site is contaminated with mining wastes as a result of lead and zinc ore mining and processing that began in Kansas in the 1870s, moved into Missouri shortly thereafter, and continued until 1970. EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990. 55 Fed. Reg. 35502.

16. EPA has divided the Site into five Operable Units (OUs) for administrative efficiency in conducting environmental cleanups. In September of 2004, EPA issued a Record of Decision selecting the agency's environmental remedy for OU-1. OU-1 consists of several Designated Areas of mining waste including chat, tailings and waste rock as well as tributaries running through such waste areas.

17. Each of the Defendants is a "person" within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

18. Each of the Defendants or their predecessors in interest owned and/or operated mines and/or mills in one or more Designated Areas of OU-1 of the Site at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

19. Defendants are "persons having control over a hazardous substance" as that term is used in Mo. Rev. Stat. § 260.530.

20. OU-1 of the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and as used in Section 107 of CERCLA, 42 U.S.C. § 9607.

21. Mining and milling waste materials were disposed of at OU-1 of the Site and contain "hazardous substances" within the meaning of Sections 101(14), 104, and 107 of CERCLA, 42 U.S.C. §§ 9601(14), 9604, and 9607, and Mo. Rev. Stat. § 260.530.

22. There have been and continue to be "releases" or "substantial threats of releases" of such hazardous substances into the environment in and around OU-1 of the Site within the meaning of Sections 101(22), 104, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, and 9607.

23. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the releases and threatened releases of hazardous substances from the Site.

24. The United States and the State have undertaken, and continue to undertake

removal, remedial, and other response actions at OU-1 of the Site in response to releases or threatened releases of hazardous substances, pollutants, and contaminants within the meaning of Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607.

25. As a result of the releases or threatened releases of hazardous substances from OU-1 of the Site, the Plaintiffs have incurred and will continue to incur, "response costs," including costs of removal and/or remedial action, as defined in Sections 101(23), (24), and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

26. The response actions taken by the United States at OU-1 of the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

CLAIM FOR INJUNCTIVE RELIEF UNDER SECTION 106 OF CERCLA

27. Paragraphs 1-26 are re-alleged and incorporated by reference.

28. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendants are liable to perform the response actions identified in the ROD for OU-1 because EPA has determined that such actions are necessary to abate a danger or threat to the public health or welfare or the environment posed by the releases and threatened releases of hazardous substances at the Site.

SECOND CLAIM FOR RELIEF

CLAIM FOR RECOVERY OF RESPONSE COSTS UNDER SECTION 107(a)(1) AND (2) OF CERCLA

29. Paragraphs 1-28 are re-alleged and incorporated by reference.

30. Defendants are liable under Sections 107(a)(1) and (2) of CERCLA for a, 42 U.S.C. § 9607(a), for all costs incurred by the Plaintiffs in response to releases or threatened releases of hazardous substances at OU-1 of the Site.

THIRD CLAIM FOR RELIEF

CLAIM FOR RECOVERY OF RESPONSE COSTS
UNDER MO. REV. STAT. SECTION 260.530

- 31. Paragraphs 1-30 are re-alleged and incorporated by reference.
- 32. Defendants are liable to the State pursuant to Mo. Rev. Stat. § 260.530 for all costs incurred by the State in response to releases or threatened releases of hazardous substances at OU-1 of the Site.

FOURTH CLAIM FOR RELIEF

CLAIM FOR DECLARATORY JUDGMENT
PURSUANT TO SECTION 113(g)(2) of CERCLA

- 33. Paragraphs 1 through 32 are re-alleged and incorporated by reference.
- 34. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. §9613(g)(2), the United States is entitled to a declaratory judgment against Defendants on liability for costs to be incurred by the United States for response actions in connection with OU-1 of the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Award the Plaintiffs a judgment against the Defendants for all costs incurred by the Plaintiffs in response to releases or threatened releases of hazardous substances at OU-1 of the Site.
- B. Enter an order requiring the Defendants to implement EPA's selected remedy for OU-1 of the Site.
- C. Enter a declaratory judgment on liability against the Defendants as provided in Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action or actions to recover further response costs or damages at OU-1 of the Site.
- D. Grant such other and further relief as is appropriate.

Respectfully submitted,

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division

ELIZABETH LOEB, Member of the New York Bar
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 616-8916
Facsimile: (202) 514-4180

JOHN F. WOOD
United States Attorney

By:
Charles M. Thomas, Mo. Bar No. 28522
Assistant United States Attorney
Charles Evans Whittaker Courthouse
400 East Ninth Street, Room 5510
Kansas City, Missouri 64106
Telephone: (816) 426-3130
Facsimile: (816) 426-3165

JEREMIAH W. (JAY) NIXON
Attorney General

SHELLEY A. WOODS
Assistant Attorney General
MBE #33525
8th Floor, Broadway Building
P.O. Box 899
Jefferson City, Missouri 65102
(314) 751-8795

shelley.woods@ago.mo.gov
Attorneys for Plaintiff State of Missouri

OF COUNSEL:

Jane Kloeckner
Assistant Regional Counsel
United States Environmental
Protection Agency
901 N. 5th Street
Kansas City, KS 66101